

**RESOLUTION 21-2004**  
**MADISON COUNTY RIVERS/STREAMS ACCESS POLICY AT COUNTY ROAD BRIDGES**

WHEREAS, the Attorney General of the State of Montana issued Opinion 13, Volume 48, which held that the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments, and

WHEREAS, 7-14-2102 MCA states "Each Board of County Commissioners may in its discretion do whatever may be necessary for the best interest of the county roads..." and

WHEREAS, the Board of Madison County Commissioners is concerned with safety by keeping livestock off the county roads and with moving livestock across the bridges, and

WHEREAS, 7-14-2130(1) MCA states that "Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads."and,

WHEREAS, fences from the edge of the road right-of-way to the bridge guard rails provide safety for the traveling public, and

WHEREAS, the Board has heard and considered public comments from both the landowners adjacent to the bridge sites and from sportsmen wanting access at the bridge sites, and

WHEREAS, at Commissioners' public meetings on March 22 and April 5, 2004, certain sportsmen volunteered to purchase and install stiles or gates to access the rivers and streams, and

WHEREAS, Madison County, the Board of Commissioners, and the County Attorney are subsequently being sued in part for relying on the word of those sportsmen in developing Resolution 13-2004, and

WHEREAS, 48 Opinion Attorney General No. 13, Page 8, B, May 26, 2000 states, "Second, access can be limited by the exercise of the governing body's police power to control the use of roads for purposes such as safety and parking. See e.g. Mont. Code Ann. §§ 61-8-353, 61-12-101. The Board of County Commissioners has the statutory authority to "control, and manage county roads and bridges." Mont. Code Ann. § 7-14-2101(1)(2)(i), to do in their discretion "whatever may be necessary for the best interest of the county roads," Mont. Code Ann. § 7-14-2102, and to exercise general supervision over county roads. Mont. Code Ann. § 7-14-2103."

NOW THEREFORE BE IT RESOLVED that the Board of Madison County Commissioners establishes the following policy concerning river/stream access at county road bridges:

1. Landowners are to remove orange paint and no trespassing signs in county road rights-of-way.
2. Adjacent landowners or representatives, the Commissioner from the District in which the bridge is located, and a volunteer sportsman, may meet on site to determine the best location and type of stiles or apparatus to be installed to provide access to river/stream.
3. Landowners may apply for an "Encroachment Permit" to keep fences connected to the bridge guard rails or abutments. The permit is attached and is a part of this resolution. The permit will be recorded by the County.
4. Sportsmen may provide the necessary gates, fencing, posts, etc. needed for the access as determined by the County Commissioner from the District in which the bridge is located.
5. The County will install the access apparatus.
6. The County may provide and install warning and/or no parking signs in areas deemed to be dangerous in accord with 61-8-353 MCA.
7. Sportsmen are encouraged to initiate a self education program for proper access of waterways and staying within the high water marks as promised at the March 22, 2004 meeting.
8. Sportsmen are encouraged to police themselves and report trespassing violations on private property.
9. Landowners adjacent to county road bridges may negotiate with the Department of Fish, Wildlife, and Parks to promote public fishing access in accord with 87-1-285 MCA which may provide access and designated parking.
10. In cooperation with the Sheriff and County Attorney, the County will cite and prosecute trespassers on private property in accord with state law.

Approved by the Board of Commissioners this \_\_\_\_ day of \_\_\_\_\_, 2004.

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C. TED COFFMAN, CHAIRMAN

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DAVID SCHULZ

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FRANK G. NELSON